

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

MARIO FRANCO,

Plaintiff,

v.

ANSWER

**Civil Action No.: 5:16-CV-0634
(FJS/TWD)**

JURY TRIAL DEMANDED

**THE CITY OF SYRACUSE, POLICE OFFICER
JOHN GUNSALUS, POLICE OFFICER
WILLIAM LASHOMB, POLICE OFFICER MAURO,
POLICE OFFICER KELLY and
UNIDENTIFIED SYRACUSE POLICE OFFICERS,
all sued herein in their capacity as individuals,**

Defendants.

Defendants **THE CITY OF SYRACUSE, POLICE OFFICER JOHN GUNSALUS, POLICE OFFICER WILLIAM LASHOMB, POLICE OFFICER MAURO, POLICE OFFICER KELLY and UNIDENTIFIED SYRACUSE POLICE OFFICERS, all sued herein in their capacity as individuals, (“Defendants”),** by and through their attorney, ROBERT P. STAMEY, ESQ. CORPORATION COUNSEL OF THE CITY OF SYRACUSE, Aimee Paquette, Esq., Assistant Corporation Counsel, Of Counsel, answers the Plaintiff’s Complaint as follows:

1. Defendants **DENY** the allegations contained in paragraph “1” of the Complaint herein;
2. Defendants **DENY** the allegations contained in paragraph “2” of the Complaint herein;
3. Defendants **DENY KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the allegations contained in paragraph “3” of the Complaint herein;
4. Defendants **ADMIT** the allegations contained in paragraph “4” of the Complaint herein;

5. Defendants **DENY AS CHARACTERIZED** the allegations contained in paragraph “5” of the Complaint herein;

6. Defendants **DENY KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the allegations contained in paragraph “6” of the Complaint herein;

7. Defendants **DENY** the allegations contained in paragraph “7” of the Complaint herein;

8. Defendants **DENY** the allegations contained in paragraph “8” of the Complaint herein;

9. Defendants **DENY** the allegations contained in paragraph “9” of the Complaint herein;

10. Defendants **DENY KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the allegations contained in paragraph “10” of the Complaint herein;

11. Defendants **DENY KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the allegations contained in paragraph “11” of the Complaint herein;

12. Defendants **DENY KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the allegations contained in paragraph “12” of the Complaint herein;

13. Defendants **DENY** the allegations contained in paragraph “13” of the Complaint herein;

14. Defendants **DENY** the allegations contained in paragraph “14” of the Complaint herein;

15. Defendants **DENY** the allegations contained in paragraph “15” of the Complaint herein;

16. Defendants **DENY** the allegations contained in paragraph “16” of the Complaint herein;

17. Defendants **DENY** the allegations contained in paragraph “17” of the Complaint herein;

18. Defendants **DENY** the allegations contained in paragraph “18” of the Complaint herein;

19. Defendants **DENY** the allegations contained in paragraph “19” of the Complaint herein;

20. Defendants **DENY** the allegations contained in paragraph “20” of the Complaint herein;

21. Defendants **DENY** the allegations contained in paragraph “21” of the Complaint herein;

22. Defendants **DENY KNOWLEDGE OR INFORMATION** sufficient to form a belief

as to the allegations contained in paragraph “22” of the Complaint herein;

23. Defendants **DENY** the allegations contained in paragraph “23” of the Complaint herein;
24. Defendants **DENY** the allegations contained in paragraph “24” of the Complaint herein;
25. Defendants **DENY** the allegations contained in paragraph “25” of the Complaint herein;
26. Defendants **DENY** the allegations contained in paragraph “26” of the Complaint herein;
27. Defendants **DENY** the allegations contained in paragraph “27” of the Complaint herein;
28. Defendants **DENY** the allegations contained in paragraph “28” of the Complaint herein;
29. Defendants **DENY** the allegations contained in paragraph “29” of the Complaint herein;
30. Defendants **DENY** the allegations contained in paragraph “30” of the Complaint herein;
31. Defendants **DENY** the allegations contained in paragraph “31” of the Complaint herein;
32. Defendants **DENY** the allegations contained in paragraph “32” of the Complaint herein;
33. Defendants **DENY** the allegations contained in paragraph “33” of the Complaint herein;
34. Defendants **DENY** the allegations contained in paragraph “34” of the Complaint herein;
35. Defendants **DENY** the allegations contained in paragraph “35” of the Complaint herein;
36. Defendants **DENY** the allegations contained in paragraph “36” of the Complaint herein;
37. Defendants **DENY** the allegations contained in paragraph “37” of the Complaint herein;
38. Defendants **DENY** the allegations contained in paragraph “38” of the Complaint herein;
39. Defendants **DENY** the allegations contained in paragraph “39” of the Complaint herein;
40. Defendants **DENY** the allegations contained in paragraph “40” of the Complaint herein;
41. Defendants **DENY** the allegations contained in paragraph “41” of the Complaint herein;
42. Defendants **DENY** the allegations contained in paragraph “42” of the Complaint herein;
43. Defendants **DENY** the allegations contained in paragraph “43” of the Complaint herein;
44. Defendants **DENY** the allegations contained in paragraph “44” of the Complaint herein;

45. Defendants **DENY** the allegations contained in paragraph “45” of the Complaint herein;
46. Defendants **DENY** the allegations contained in paragraph “46” of the Complaint herein;
47. Defendants **DENY** the allegations contained in paragraph “47” of the Complaint herein;
48. Defendants **DENY** the allegations contained in paragraph “48” of the Complaint herein;
49. Defendants **DENY** the allegations contained in paragraph “49” of the Complaint herein;
50. Defendants **DENY** the allegations contained in paragraph “50” of the Complaint herein;
51. Defendants **DENY** the allegations contained in paragraph “51” of the Complaint herein;
52. Defendants **DENY** the allegations contained in paragraph “52” of the Complaint herein;
53. Defendants **DENY** the allegations contained in paragraph “53” of the Complaint herein;
54. Defendants **DENY** the allegations contained in paragraph “54” of the Complaint herein;
55. Defendants **DENY** the allegations contained in paragraph “55” of the Complaint herein;
56. Defendants **DENY** the allegations contained in paragraph “56” of the Complaint herein;
57. Defendants **DENY** the allegations contained in paragraph “57” of the Complaint herein;
58. Defendants **DENY** the allegations contained in paragraph “58” of the Complaint herein;
59. Defendants **DENY** the allegations contained in paragraph “59” of the Complaint herein;
60. Defendants **DENY** the allegations contained in paragraph “60” of the Complaint herein;
61. Defendants **DENY** the allegations contained in paragraph “61” of the Complaint herein;
62. Defendants **DENY** the allegations contained in paragraph “62” of the Complaint herein;
63. Defendants **DENY** the allegations contained in paragraph “63” of the Complaint herein;
64. Defendants **DENY** the allegations contained in paragraph “64” of the Complaint herein;
65. Defendants **DENY** the allegations contained in paragraph “65” of the Complaint herein;
66. Defendants **DENY** the allegations contained in paragraph “66” of the Complaint herein;
67. Defendants **DENY** the allegations contained in paragraph “67” of the Complaint herein;

68. Defendants **DENY** the allegations contained in paragraph “68” of the Complaint herein;
69. Defendants **DENY** the allegations contained in paragraph “69” of the Complaint herein;
70. Defendants **DENY** the allegations contained in paragraph “70” of the Complaint herein;
71. Defendants **DENY** the allegations contained in paragraph “71” of the Complaint herein;
72. Defendants **DENY** the allegations contained in paragraph “72” of the Complaint herein;
73. Defendants **DENY** all other allegations not specifically admitted herein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

74. Any damages alleged to have been sustained by Plaintiff were caused or contributed to in full or in part by the culpable conduct and/or assumption of the risk of Plaintiff and not by any culpable conduct on behalf of the Defendants;

AS AND FOR A SECOND AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

75. Plaintiff is guilty of provoking any actions alleged as excessive and unreasonable force;

AS AND FOR A THIRD AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

76. Some or all of the Plaintiff’s claims for compensatory and punitive damages are barred by applicable state and federal law;

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

77. Plaintiff has failed to state a claim upon which relief may be granted; any claims for punitive damages violate provisions of the Constitution of the United State and the State of New York;

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

78. To the extent that the Plaintiff seeks punitive or exemplary damages within his Complaint against the Defendant City or individual defendants in their official capacity, such claims should be dismissed as improper;

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

79. Plaintiff has failed to state a cause of action upon which relief may be granted;

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

80. Plaintiff's pleadings are insufficient and not in the form prescribed pursuant to the Federal Rules of Civil Procedure, thus failing to state a cause of action;

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

81. Some or all of Plaintiff's claims are barred by the applicable statute of limitations;

AS AND FOR A NINTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

82. Some or all of Plaintiff's causes of action are barred by his failure to comply with §§50-e, 50-h and 50-i of the GENERAL MUNICIPAL LAW;

AS AND FOR A TENTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

83. To the extent Plaintiff has failed to mitigate his damages, his claims for damages are diminished or barred;

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

84. Some or all of the damages alleged in the complaint are barred and/or subject to the qualifications and limitations of the provisions of Section 4545 of the CPLR;

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

85. Some or all of the Plaintiff's claims are barred because the Plaintiff failed to exhaust his administrative remedies and/or meet conditions precedent to the commencement of this action as required by law;

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

86. Any and all acts of Defendants and any agents or employees of the City were justified and in accordance with the law;

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

87. Any alleged violation of Plaintiff's constitutional rights was not the proximate cause of Plaintiff's injuries and/or damages;

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

88. Some of Plaintiff's claims, in whole or in part, fail based on a lack of personal involvement by the named Defendants in the alleged constitutional violations;

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

89. Any force used by Defendants and/or any agents or employees of the City was privileged, reasonable, and necessary;

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

90. The Complaint fails to state specific acts of conduct attributable to the Defendants that gives rise to liability pursuant to 42 U.S.C. §1983;

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE,

DEFENDANTS ALLEGE AS FOLLOWS:

91. The Complaint fails to allege the existence of a custom, policy or practice of the municipal defendant which gives rise to liability pursuant to 42 U.S.C. §1983;

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

92. The Defendant City does not maintain or allow a policy, custom or practice that allegedly violated Plaintiff's civil rights;

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

93. The City of Syracuse maintains adequate policies that are in accordance with State and Federal Law.

AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

94. The Complaint fails to allege actions taken by officials with final policymaking authority that caused a constitutional violation of Plaintiff's civil rights;

AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

95. Upon information and belief, if Plaintiff obtains any recovery in this action against the Defendants, such recovery and liability against the Defendants should be limited pursuant to Articles 14 and 16 of the CPLR; the liability, if any, of the Defendants to Plaintiff for non-economic loss shall be limited to the Defendants' equitable share of the culpable conduct causing or contribution to the total liability for the non-economic loss of the Plaintiff, if any;

AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

96. Upon information and belief, Plaintiff may have, or might in the future, reach

agreements and/or settlement with other nonparty tortfeasors and in the event of such circumstances, will be obligated to immediately disclose the same to the Defendants at which time the Defendants will have the right to set-off any and all other available relief pursuant to General Obligations Law §15-108;

AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

97. If the Plaintiff suffered any injury or damage, such injury or damage was caused in whole or in part by a third party acting outside the scope of his employment;

AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

98. Any actions done by agents of the City in arresting and detaining Plaintiff were done in good faith, with probable cause and without malice.

AS AND FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

99. Any and all acts of the Defendants and/or any agents or employees of the City of Syracuse was privileged, reasonable and necessary and is protected by qualified immunity;

AS AND FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

100. Any and all acts of the Defendants and/or any agents or employees of the City of Syracuse was privileged, reasonable and necessary and is protected by absolute immunity;

AS AND FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

101. Defendants' actions were not motivated by evil motive or intent and were not performed with reckless or callous indifference to plaintiff's federally protected rights;

AS AND FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

102. Defendants' actions were not malicious, willful, wanton, reckless, grossly negligent, or extreme and outrageous;

AS AND FOR A THIRTIETH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

103. Demand is made for a jury trial on all issues;

AS AND FOR A THIRTY-FIRST AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

104. The Court has not obtained personal jurisdiction over each Defendant named in this action because Plaintiff failed to effectuate personal service of the Summons and Complaint;

AS AND FOR A THIRTY-SECOND AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

105. The Court lacks subject matter jurisdiction over some or all of Plaintiff's claims;

AS AND FOR A THIRTY-THIRD AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

106. Some or all of Plaintiff's claims are barred by res judicata and/or collateral estoppel;

AS AND FOR A THIRTY-FOURTH AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE AS FOLLOWS:

107. Defendants reserve the right to raise additional defenses, which may become known during further investigation and discovery in this case;

WHEREFORE, Defendants demand judgment dismissing the Complaint with costs, disbursements, attorney's fees and for such other and further relief as to the Court may deem just and proper.

Dated: June 30, 2016
Syracuse, New York

ROBERT P. STAMEY, ESQ.
CORPORATION COUNSEL
OF THE CITY OF SYRACUSE

By: _____/s_____
Aimee M. Paquette

Assistant Corporation Counsel
Bar Roll No. 516178
Attorney for Defendants
300 City Hall
Syracuse, New York 13202
Tel: (315) 448-8400
Fax: (315) 448-8381
E-Mail: apaquette@syr.gov

To: Fred Lichtmacher
The Law Office of Fred Lichtmacher, P.C.
2 Wall Street, 10th Floor
New York, New York 10005

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 30, 2016, she filed Defendants' Answer by electronically filing with the Clerk of the Court herein, which is understood to have sent notification of such filing electronically to the following:

Fred Lichtmacher
The Law Office of Fred Lichtmacher, P.C.
2 Wall Street, 10th Floor
New York, New York 10005

Dated: June 30, 2016
Syracuse, New York

ROBERT P. STAMEY, ESQ.
CORPORATION COUNSEL
OF THE CITY OF SYRACUSE

By: _____/s_____
Aimee M. Paquette
Assistant Corporation Counsel
Bar Roll No. 516178
Attorney for City Defendants
300 City Hall
Syracuse, New York 13202
Tel: (315) 448-8400
Fax: (315) 448-8381
E-Mail: apaquette@syr.gov